PUBLIC PROSECUTOR v. R.K. MENON & ANOR.

[R.Cr.J. (Ajaib Singh J.) December 15, 1977]
[Johore Bahru — Criminal Revision No. 1 of 1977]

Criminal Law and Procedure — Trial — Subordinate Court — Procedure ruling by — Not appealable — Penal Code (Cap. 45), ss. 109 and 193 — Criminal Procedure Code (F.M.S. Cap. 6), ss. 129(i)(b), 307(i).

In this case the accused persons had been charged for offences under sections 109 and 193 of the Penal Code. At the end of the prosecution case counsel for the accused submitted that the prosecution had only tendered a sanction to prosecute but had not shown that a complaint had been made by the relevant court in compliance with section 129(i)(b) of the Criminal Procedure Code. The learned President of the Sessions Court overruled this objection whereupon counsel for the accused said he would appeal against the ruling. The prosecuting officer raised no objection and the learned President suspended the further hearing of the case pending the appeal. An application was thereupon made for an order by way of revision directing the learned president to continue with the hearing of the case.

Held: (1) there is no right of appeal against a procedural ruling made by a Subordinate Court in the course of and during the hearing of a criminal trial. A procedural ruling is not a judgment, sentence or order within the meaning of section 307(i) of the Criminal Procedure Code;

(2) the learned President of the Sessions Court should continue with the hearing of the case.

Case referred to:-

(1) *Public Prosecutor* v. *Hoo Chang Chwen* [1962] M.L.J. 284.

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Lee Lim Huat (Deputy Public Prosecutor) for the Public Prosecutor.

Karpal Singh for the accused.

Ajaib Singh J.: There is no right of appeal against a procedural ruling made by a subordinate court in the course of and during the hearing of a criminal trial. Under section 307(i) of the Criminal Procedure Code any person who is dissatisfied with any judgment, sentence or order pronounced by a subordinate court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, sentence or order. But a procedural ruling is not a judgment, sentence or order within the meaning of section 307(i) of the Criminal Procedure Code. There appears to be no local authority on this particular point but there is this Singapore case of *Public Prosecutor* v. *Hoo Chang Chwen*[1] where it was held that the prosecution or the defence cannot appeal in the middle of a trial against a procedural ruling because such a ruling is not an appealable order within the provisions of the Criminal Procedure Code. The provisions of the Criminal Procedure Code referred to in that case are *in pari materia* with those in our Criminal Procedure Code relating to criminal appeals from the subordinate courts to the High Court.

The legislature has for good reason refrained from making any provision for an appeal to be preferred against a procedural ruling made in the subordinate court in a criminal case or matter. In the course of criminal trials in the subordinate courts the presiding officers quite often make rulings on questions which are purely procedural in nature. If an appeal is allowed to be preferred by the prosecution or the defence against a procedural ruling further hearing of the particular criminal trial in the subordinate court will necessarily have to be stayed pending the outcome of the appeal in the High Court. Imagine the number of such appeals which are bound to be preferred against scores of procedural rulings which are a daily occurrence in criminal trials in the subordinate courts in the country. The result would be that the whole administration of criminal justice would be bogged down. "The proper time", said Rose C.J. in the case of *Public Prosecutor* v. *Hoo Chang Chwen, supra,* "to take such (procedural) points would be upon appeal, after determination of the principal matter in the trial court."

In the present case two accused persons were being tried in the Sessions Court for offences under sections 109 and 193 of the Penal Code. After the prosecution had closed its case the defence was called. It was at this stage that Mr. Karpal Singh learned counsel for the accused raised an objection on a point of law. He submitted that the prosecution had only tendered a sanction to prosecute but had not complied with the requirements of section 129(i)(b) of the Criminal Procedure Code in that the trial being for alleged offences under sections 109 and 193 of the Penal Code a complaint by the relevant court as stated in section 129(i)(b) of the Criminal Procedure Code was a prerequisite to the commencement of the criminal trial against the two accused persons. The learned President of the Sessions Court overruled this objection whereupon counsel for the accused said that he would appeal against this ruling and applied that further hearing of the case be suspended pending the outcome of the appeal. The prosecuting officer raised no objection and the learned President granted the application. Subsequently the learned Legal Adviser who in fact was himself prosecuting the case in the lower court wrote to the High Court stating that he might have erred in not opposing the application of Mr. Karpal Singh and asked the High Court to make an order by way of revision directing the learned President to continue with the hearing of the case. Hence the present criminal revision before me.

Mr. Karpal Singh for the accused must have reconsidered the matter for he conceded before me that a procedural ruling was not appealable. However he submitted that as the matter had now been brought up to the High Court it was well within the court's jurisdiction to look into the record and decide whether or not the trial was a nullity because of non-compliance with section 129(i)(b) of the Criminal Procedure Code. I agreed that it was within my powers to rectify any error of the lower court by way of revision at this stage but I did not feel inclined to delve into the somewhat debatable question of law raised by Mr. Karpal Singh as I thought it best in the circumstances to let the case take its normal course in the lower court. I accordingly directed the learned President to proceed with the trial from the point where he had adjourned.

Order accordingly.

Solicitors: *Karpal Singh & Co.*